

# Exhibit B



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VIA FIRST CLASS MAIL AND EMAIL

February 5, 2017

Rebecca Mermelstein, Esq.  
Amanda Kramer, Esq.  
Jessica Greenwood, Esq.  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
1 St. Andrews Plaza  
New York, New York 10007

Re: United States v. David Middendorf  
18 Cr 36 (JPO)  
Defendant Cynthia Holder's Requests for  
Discovery, Brady Material, a Bill of Particulars and Additional Information

Dear Ms. Mermelstein, Ms. Kramer and Ms. Greenwood:

Please accept this letter as the request of defendant Cynthia Holder for discovery pursuant to Fed. R. Crim. P. 16 and 12, for production of *Brady* and *Giglio* material, for a bill of particulars pursuant to Fed. R. Crim. P. 7(f), and for additional information.

A. Request for Discovery Pursuant to Fed. R. Crim. P. 16

Ms. Holder requests production and disclosure of the following information and items:

1. All statements required to be disclosed to Ms. Holder pursuant to Fed. R. Crim. P. 16(a)(1)(A) and (B). Please specifically identify the substance of any relevant statement made by Ms. Holder whether before or after arrest in response to interrogation by any person then known by Ms. Holder to be a government agent which the government intends to use at trial.
2. Pursuant to Fed. R. Crim. P. 16(a)(1)(D), a copy of Ms. Holder's prior criminal record, if any.
3. All items described in Fed. R. Crim. P. 16(a)(1)(E). Please specifically identify those items which the government intends to use in its case-in-chief at trial, Fed. R. Crim. P. 16(a)(1)(E)(ii), and which were obtained from, or belong to, Ms. Holder. Fed. R. Crim. P. 16(a)(1)(E)(iii).
4. All results, reports, experiments and tests described in Fed. R. Crim. P. 16(a)(1)(F). Please specifically identify any result, report, examination and/or test the government intends to use in its case-in-chief at trial. Fed. R. Crim. P. 16(a)(1)(F)(iii).

THOMPSON  
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AUSAs Mermelstein, Kramer & Greenwood  
February 5, 2018  
Page 2

5. Pursuant to Fed. R. Crim. P. 16(a)(1)(G), a complete written summary of testimony to be presented by any person, including any person currently or formerly employed by the U.S. Securities and Exchange Commission or the Public Company Accounting Oversight Board, to be called by the government as an expert witness pursuant to Fed. R. Evid. 702, 703 or 705, including the witness' name, address, education, training, qualifications, opinions, the bases and the reasons therefor, and his or her qualifications.

Pursuant to Fed. R. Crim. P. 16(c), please promptly supplement any response to the above requests as additional evidence or material becomes available.

B. Request for production of *Brady* and *Giglio* material

Pursuant to applicable federal constitutional provisions, Supreme Court and Second Circuit precedent, and Rule 3.8(b) of New York's Rules of Professional Conduct – applicable to federal prosecutors in the Southern District of New York pursuant to 28 U.S.C. §530B(a) – defendant Cynthia Holder requests disclosure of the following information as soon as possible:

1. Any information and/or evidence tending to show that the PCAOB did not enforce EC 9 of its Ethics Code prior to February 2017.
2. Any information and/or evidence tending to show that, prior to February 2017, the PCAOB did not take steps to protect the “confidentiality” of its 2015-2017 KPMG inspection lists.
3. Any information and/or evidence tending to impeach or impair the credibility of Brian Sweet including, but not limited to:
  - a. Mr. Sweet's plea agreement.
  - b. Any promises, rewards and/or inducements (financial or otherwise) offered, or any threats of criminal prosecution made, to Mr. Sweet either directly or through his counsel.
  - c. Reports and/or records and/or handwritten notes reflecting statements made by Mr. Sweet to government agents and prosecutors, including SEC attorneys.
  - d. Reports and/or records reflecting bad acts and/or crimes committed by Mr. Sweet, including the transcript of Mr. Sweet's January 22, 2018, guilty plea proceeding.
  - e. Any and all differences between information provided to the government by Mr. Sweet and information provided to the government in any proffers made by Mr. Sweet's counsel.



AUSAs Mermelstein, Kramer & Greenwood  
 February 5, 2018  
 Page 3

4. Any information and/or evidence showing or tending to show that Ms. Holder (a) did not intend to defraud the SEC (count one) or (b) the PCAOB (counts two, four and five).
5. Any other information and/or evidence favorable to Ms. Holder, whether material or not, on the issue of guilt or punishment or which serves to impeach a government witness who will testify at trial.
6. Presentence investigation reports, if any, prepared in connection with Brian Sweet and/or any other witness the government intends to call to testify at trial.

C. Request for Bill of Particulars Pursuant to Fed. R. Crim. P. 7(f)

Pursuant to Fed. R. Crim. P. 7(f), and in order to adequately prepare for trial and to avoid surprise at trial, please provide particulars for the paragraphs in the indictment as indicated in the following table:

<u>Request No.</u>	<u>Indictment Count &amp; Paragraph</u>	<u>Particulars Requested</u>
<b>Count One</b>		
1.	3 (line 1)	Identify the "relevant accounting standards"
2.	6 (last sentence)	Identify the "other" factors
3.	18(i)	Identify other former PCAOB personnel recruited and hired by KPMG
4.	18(ii)	Identify "the 'Data Firm'"
5.	27 (second sentence)	Identify the "legal obligations"
6.	28	Identify the "others"
7.	29	Identify the "others"
8.	30	Identify the "Network Documents"

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AUSAs Mermelstein, Kramer & Greenwood

February 5, 2018

Page 4

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| 9.  | 30 (second sentence) | Identify the "other confidential documents"      |
| 10. | 30 (third sentence)  | Identify the "certain hard copy documents"       |
| 11. | 30 (fourth sentence) | Identify the "other documents"                   |
| 12. | 31                   | Identify the "other PCAOB personnel"             |
| 13. | 32 (first sentence)  | Identify the "others"                            |
| 14. | 32                   | Identify the "Issuer"                            |
| 15. | 40(i)                | Identify the one or more "engagement partner(s)" |
| 16. | 40(ii)               | Identify the "certain KPMG partners"             |
| 17. | 41                   | Identify the "others"                            |
| 18. | 42(ii)               | Identify the "PCAOB personnel"                   |
| 19. | 42(a)                | Identify "Partner-1"                             |
| 20. | 42(b)                | Identify "Swiss Bank-1"                          |
| 21. | 42(b)                | Identify "Japanese Bank-1"                       |
| 22. | 42(c)                | Identify the "others"                            |
| 23. | 42(c)                | Identify "German Bank"                           |
| 24. | 42(c)                | Identify "Japanese Bank-1"                       |
| 25. | 43                   | Identify the "rate of success"                   |
| 26. | 44                   | Identify the "KPMG personnel"                    |
| 27. | 45                   | Identify "KPMG Partner-2"                        |
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THOMPSON  
HINE

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AUSAs Mermelstein, Kramer & Greenwood

February 5, 2018

Page 5

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| 28. | 45                      | Identify the "PCAOB planning document"                |
| 29. | 46                      | Identify the "others"                                 |
| 30. | 50(a)                   | Identify the "other KPMG personnel"                   |
| 31. | 50(b)                   | Identify the "particular audit"                       |
| 32. | 50(c) (first sentence)  | Identify the "KPMG inspection"                        |
| 33. | 50(d) (first sentence)  | Identify the "ongoing KPMG inspection"                |
| 34. | 50(d) (second sentence) | Identify the "PCAOB IT inspector"                     |
| 35. | 52                      | Identify "Issuer-1"                                   |
| 36. | 54                      | Identify the "certain confidential PCAOB information" |
| 37. | 56                      | Identify the "confidential PCAOB information"         |
| 38. | 57                      | Identify the "particular PCAOB inspector"             |
| 39. | 58(a)                   | Identify the "specific Issuer"                        |
| 40. | 58(b)                   | Identify the "particular Issuer"                      |
| 41. | 62                      | Identify the "others"                                 |
| 42. | 63                      | Identify the "12 Issuers"                             |
| 43. | 64                      | Identify the "10 banking Issuers"                     |
| 44. | 64                      | Identify the "two non-banking Issuers"                |
| 45. | 67                      | Identify the "Re-reviewers"                           |
| 46. | 68                      | Identify the "additional individuals"                 |
| 47. | 68(a)                   | Identify "Partner-3"                                  |
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# THOMPSON HINE

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AUSAs Mermelstein, Kramer & Greenwood  
February 5, 2018  
Page 6

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| 48. | 68(a)                           | Identify the Re-reviewers                            |
| 49. | 68(b)                           | Identify the Re-reviewers                            |
| 50. | 71                              | Identify "Partner-4"                                 |
| 51. | 71                              | Identify "Issuer-2"                                  |
| 52. | 72                              | Identify the "applicable accounting standards"       |
| 53. | 72(c)                           | Identify the "Team Leader"                           |
| 54. | 72(d)                           | Identify "Issuer-3"                                  |
| 55. | 72(d)                           | Identify the "additional substantive audit work"     |
| 56. | 72(e)                           | Identify "Issuer-4"                                  |
| 57. | 72(e)                           | Identify the "additional audit work"                 |
| 58. | 72(e)                           | Identify the "applicable auditing standards"         |
| 59. | 73                              | Identify the "Issuers"                               |
| 60. | 75(i)                           | Identify the "certain partners"                      |
| 61. | 75(ii)                          | Identify the "additional personnel"                  |
| 62. | 78                              | Identify the "additional KPMG personnel"             |
| 63. | 79 (first and second sentences) | Identify the "others"                                |
| 64. | 81                              | Identify the "approximately 50 stock ticker symbols" |
| 65. | 81                              | Identify the "areas of focus"                        |
| 66. | 81                              | Identify the "other information"                     |
| 67. | 82                              | Identify the "focus areas"                           |
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THOMPSON  
HINE

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AUSAs Mermelstein, Kramer & Greenwood  
February 5, 2018  
Page 7

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| 68. | 83(a)               | Identify the “engagement partners”                             |
| 69. | 83(b)               | Identify the “focus areas”                                     |
| 70. | 83(c)               | Identify the “engagement partners”                             |
| 71. | 83(d)               | Identify the “focus areas”                                     |
| 72. | 83(d)               | Identify the “other matters”                                   |
| 73. | 83(e)               | Identify the “focus areas”                                     |
| 74. | 83(e)               | Identify the “particular engagement”                           |
| 75. | 84                  | Identify “Partner-5”   |
| 76. | 84                  | Identify Partner-5’s “supervisor”                              |
| 77. | 84                  | Identify “KPMG’s General Counsel”                              |
| 78. | 84                  | Identify the “members of KPMG’s Office of the General Counsel” |
| 79. | 88                  | Identify the “OGC personnel”                                   |
| 80. | 88 (first sentence) | Identify the “others”  |
| 81. | 89                  | Identify the “specified college football team”                 |
| 82. | 89                  | Identify the “designated KPMG conference call number”          |
| 83. | 91                  | Identify the “confidential information from the PCAOB”         |
| 84. | 92                  | Identify the “other()” overt acts                              |
| 85. | 92(a), (b) & (c)    | Identify the “confidential PCAOB information”                  |
| 86. | 92(d)               | Identify the “others”  |
| 87. | 92 (d)              | Identify the “certain of KPMG’s engagements”                   |
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AUSAs Mermelstein, Kramer & Greenwood  
February 5, 2018  
Page 8

88. 92(d), (f), (g) Identify the "valuable confidential PCAOB information"  
& (h)

89. 92(h) Identify the "others"

**Count Two**

90. 94 & 95 Identify the alleged intended victim(s) of the wire fraud conspiracy

91. 95 Identify the "property" the obtaining of which was the alleged object of the wire fraud conspiracy

**Count Four**

92. 99 Identify the "valuable confidential information" the obtaining of which was the alleged object of the wire fraud

93. 99 Identify the "documents" the obtaining of which was the alleged object of the wire fraud

94. 99 Identify the "other duties"

**Count Five**

95. 101 Identify the "valuable confidential information" the obtaining of which was the alleged object of the wire fraud

96. 101 Identify the "documents" the obtaining of which was the alleged object of the wire fraud

97. 101 Identify the "other duties"

**Forfeiture**

98. 102 Identify the "proceeds" traceable to the alleged commission of the offenses alleged in Counts Two, Four and Five

99. 102 Identify the "property" that "constitutes or is derived from" the "proceeds"

100. 102 Identify the “sum of money” representing “proceeds”  
“personally obtained” by Cynthia Holder

1. Please provide copies of all search warrants, search warrant inventories, pen registers, and wiretaps issued in connection with the investigation resulting in the indictment as well as affidavits and applications submitted in support thereof and, pursuant to Fed. R. Crim. P. 12(b)(4)(B), please identify all evidence seized pursuant to such search warrants which the government intends to use in its evidence-in-chief at trial.
2. Please provide notice of any intention by the government to introduce evidence against Ms. Holder pursuant to Fed. R. Evid. 404(b), including a description of the nature of the evidence in sufficient detail to permit resolution of the issue of its admissibility before trial.
3. Please provide the substance of any oral or written statements made by each of Ms. Holder's codefendants to prosecutors or their agents, to the SEC or its attorneys, to the PCAOB or its attorneys, or to KPMG or its attorneys -- either in-house or outside counsel -- which the government intends to introduce at trial so Ms. Holder can assert her rights pursuant to *Bruton v. United States*, *Crawford v. United States*, and their progeny.
4. Please provide copies of any statements made or adopted by any alleged co-conspirator, codefendant or agent of Ms. Holder regardless of whether the government intends to introduce those statements at trial.
5. To avoid delays at trial, please provide at the earliest opportunity all witness statements, including rough notes, whether handwritten or electronically created, required to be provided to the defense pursuant to Fed. R. Crim. P. 26.2, 18 U.S.C. §3500, and applicable case law.

\* \* \* \* \*

If there are items, material or information in the government's possession which are responsive to the above requests, but which are not being produced due to an objection or for another reason, please provide the basis of the objection or other reason and provide a general description of the items, material or information being withheld.

THOMPSON  
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AUSAs Mermelstein, Kramer & Greenwood  
February 5, 2018  
Page 10

Ms. Holder joins in the discovery, *Brady*, bills of particulars, and other requests for pretrial disclosure made by her codefendants to the extent they are applicable to her.

Ms. Holder reserves the right to make additional requests if warranted by disclosures made by the government in response to the above requests.

Very truly yours,

A handwritten signature in black ink, appearing to read "N.A. Bloch". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Norman A. Bloch

cc: All Counsel (via email)